

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOSEPH ODILON SECORD,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Western District of Washington, Northern Division.

FILED

OCT 16 1900

PAUL P. O'BRIEN,
CLERK

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JOSEPH ODILON SECORD,

Appellant,

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Transcript of Record.

Upon Appeal from the United States District Court for the
Western District of Washington, Northern Division.

INDICTMENT.

Vio. Act of Oct. 28, 1919, Known as the National Prohibition Act.

United States of America,
Western District of Washington,
Northern Division,—ss.

The grand jurors of the United States of America, being duly selected, impaneled, sworn and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present: [2]

COUNT I.

That JOSEPH ODILON SECORD, *alias* Odilon J. Secord, on the eighteenth day of July, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, willfully, and unlawfully sell certain intoxicating liquor, to wit, sixteen (16) ounces of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said grand jurors unknown, and which said sale by the said Joseph Odilon Secord, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the Na-

tional Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [3]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT II.

That JOSEPH ODILON SECORD, *alias* Odilon J. Secord, on the twentieth day of July, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, willfully, and unlawfully sell certain intoxicating liquor, to wit, sixteen (16) ounces of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said grand jurors unknown, and which said sale by the said Joseph Odilon Secord, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [4]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT III.

That JOSEPH ODILON, SECORD, *alias* Odilon J. Secord, on the twenty-first day of July, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, willfully, and unlawfully sell certain intoxicating liquor, to wit, sixteen (16) ounces of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said grand jurors unknown, and which said sale by the said Joseph Odilon Secord, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [5]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT IV.

That JOSEPH ODILON SECORD, *alias* Odilon J. Secord, on the twenty-first day of July, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Seattle, in the Northern Division of the Western District of Washington,

and within the jurisdiction of this Court, then and there being, did then and there knowingly, willfully, and unlawfully have and possess certain intoxicating liquor, to wit, three (3) gallons, eleven (11) pints, and eleven (11) half-pints of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said grand jurors unknown, intended then and there by the said Joseph Odilon Secord for use in violating the Act of Congress passed October 28, 1919, known as the National Prohibition Act, by selling, bartering, exchanging, giving away, and furnishing the said intoxicating liquor, which said possession of the said intoxicating liquor by the said Joseph Odilon Secord, as aforesaid, was then and there unlawful and prohibited by the Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [6]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT V.

That prior to the commission by the said JOSEPH ODILON SECORD, *alias* Odilon J. Secord, of the said offense of possessing intoxicating liquor herein set forth and described in manner and form as aforesaid, said JOSEPH ODILON

SECORD, *alias* Odilon J. Secord, on the 14th day of March, 1921, in cause No. 5724, at Seattle, in the United States District Court for the Western District of Washington, Northern Division, was duly and regularly convicted of the first offense of possessing intoxicating liquor on the 1st day of December, 1920, in violation of the said Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [7]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT VI.

That prior to the commission by the said JOSEPH ODILON SECORD, *alias* Odilon J. Secord, of the said offense of possessing intoxicating liquor herein set forth and described in manner and form as aforesaid, said JOSEPH ODILON SECORD, *alias* Odilon J. Secord, on the 9th day of April, 1925, in cause No. 9983, at Seattle, in the United States District Court for the Western District of Washington, Northern Division, was duly and regularly convicted of the second offense of possessing intoxicating liquor on the 1st day of August, 1925, in violation of the said Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [8]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT VII.

That JOSEPH ODILON SECORD, *alias* Odilon J. Secord, from the eighteenth day of July to the twenty-first day of July, inclusive, in the year of our Lord One Thousand Nine Hundred and Twenty-eight, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, and at a certain place situated at 83 Pike Street, Seattle, Washington, and known as the Outlook Hotel, then and there being, did then and there and therein knowingly, willfully, and unlawfully conduct and maintain a common nuisance by then and there manufacturing, keeping, selling, and bartering intoxicating liquors, to wit, distilled spirits, and other intoxicating liquors containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, and which said maintaining of such nuisance by the said Joseph Odilon Secord, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

ANTHONY SAVAGE,

United States Attorney.

PAUL D. COLES,

Assistant United States Attorney. [9]

[Endorsed]: A true bill.

M. J. BEEZER,
Foreman Grand Jury.
ANTHONY SAVAGE,
U. S. Attorney.

[Endorsed]: Presented to the court by the foreman of the Grand Jury in open court, in the presence of the Grand Jury, and filed in the U. S. District Court Sep. 24, 1928.

ED. M. LAKIN,
Clerk.
By S. E. Leitch,
Deputy. [10]

[Title of Court and Cause.]

ARRAIGNMENT AND PLEA.

Now on this 8th day of October, 1928, defendant Joseph Odilon Secord, *alias* Odilon J. Secord, accompanied by his attorney, Fred C. Campbell, comes into open court for arraignment and answers that his true name is Joseph Odilon Secord. He waives reading of the indictment and enters his plea of not guilty.

Journal No. 16, at page 333. [11]

[Title of Court and Cause.]

VERDICT.

We, the jury in the above-entitled cause, find the

defendant, Joseph Odilon Secord, is guilty as charged in Count I of the Indictment herein; and further find the defendant, Joseph Odilon Secord, is guilty as charged in Count II of the Indictment herein; and further find the defendant, Joseph Odilon Secord, is guilty as charged in Count III of the Indictment herein; and further find the defendant, Joseph Odilon Secord, is guilty as charged in Count IV of the Indictment herein; and further find the defendant, Joseph Odilon Secord, is guilty as charged in Count V of the Indictment herein; and further find the defendant, Joseph Odilon Secord, is guilty as charged in Count VI of the Indictment herein; and further find the defendant, Joseph Odilon Secord, is guilty as charged in Count VII of the Indictment herein.

JAMES A. WOOD,
Foreman.

[Endorsed]: Filed Jun. 4, 1929. [12]

[Title of Court and Cause.]

SENTENCE.

Comes now on this 24th day of June, 1929, the said defendant, Joseph Odilon Secord, into open court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he

nothing says save as he before hath said, wherefore by reason of the law and the premises, IT IS CONSIDERED, ORDERED and ADJUDGED by the Court that the defendant is guilty of selling intoxicating liquor as charged in counts 1, 2, and 3 of the indictment, of possession of intoxicating liquor as charged in count 4 of the indictment, of prior conviction of possession of intoxicating liquor as charged in counts 5 and 6 of the indictment, and of maintaining a common nuisance as charged in count 7 of the indictment, all in violation of the Act of October 28, 1919, known as the National Prohibition Act, and that he be punished by being imprisoned in the Kitsap County Jail or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States for the period of six (6) months on each of counts 1, 2, 3, and 7, said terms of imprisonment to run concurrently, and for the term of three (3) months under counts 4, 5, and 6, said jail sentences to run concurrently with above jail sentence, and to pay a fine of \$500.00 under counts 4, 5, and 6 of the indictment; and the defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree, Vol. 6, at page 277. [13]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Plaintiff Herein, and to the Plaintiff's Attorney:

You, and each of you, are hereby notified that the defendant gives notice of appeal from the judgment entered against him, and each and every part thereof, in the Circuit Court of Appeals of the United States for the Ninth Circuit.

FRED C. CAMPBELL,

G. T. McKINNEY,

JOHN T. DORE,

Attorneys for Defendant.

[Endorsed]: Filed Jun. 25, 1929. [14]

[Title of Court and Cause.]

PETITION FOR APPEAL.

In the Above-entitled Court, and to the Honorable JEREMIAH NETERER, Judge Thereof:

Comes now the above-named defendant, Joseph Odilon Secord, and by his attorney, John F. Dore, respectfully shows that on the 4th day of June, 1929, a jury impaneled in the above-entitled court and cause returned a verdict finding the above-named defendant guilty of the indictment theretofore filed in the above-entitled court and cause; and thereafter, within the time limited by law,

under the rules and order of this Court, the defendant moved for a new trial, which said motion was by the Court overruled and an exception thereto allowed; and thereafter, on the 24th day of June, 1929, this defendant was by order and judgment and sentence of the above-entitled court in said cause sentenced as follows:

Counts I, II, III, and VII and each of them 6 months in Kitsap County Jail to run concurrently, and on Counts 4, 5, 6, three months in Kitsap County Jail, to run concurrently with other jail sentence and to further pay the sum of \$500 as a fine. This fine is on the possession count and former conviction of possession.

And your petitioner herein, feeling himself aggrieved by said verdict and the judgment and sentence of the Court herein, as aforesaid, and by the orders and rulings of said Court, and proceedings in said cause, now herewith petitions this court for an order allowing him to prosecute an appeal from said judgment and sentence to the Circuit Court of Appeals of the United States for the Ninth Circuit, under the laws of the United States, and in accordance with the procedure of said court made and provided, to the end that the said proceedings as herein recited, and as more fully set forth in the assignments of error presented herein, may be reviewed and the manifest error appearing upon the face of the record of said proceedings and upon the trial of said cause may be by said Circuit Court [15] of Appeals corrected; and therefore, premises considered, your petitioner prays that an

appeal lie to the end that said proceedings of the District Court of the United States for the Western District of Washington may be reviewed and corrected, the said errors in said record being herewith assigned and presented herewith, and that pending the final determination of said appeal by said Appellate Court, an order may be entered herein that all further proceedings be suspended and stayed, and that pending such final determination, said defendant be admitted to bail.

JOHN F. DORE,
FRED C. CAMPBELL,
G. T. McKINNEY,
Attorneys for Defendant. [16]

[Title of Court and Cause.]

ORDER ALLOWING AN APPEAL.

An appeal is granted on this 24 day of June, 1929, and it is further ORDERED that, pending the review herein said defendant, Joseph Odilon Secord, be admitted to bail, and that the amount of the supersedeas bond to be filed by said defendant be the sum of Two Thousand Cash, to be deposited with Clerk of this court,

And it is further ORDERED that, upon the said defendant's filing his bond in the aforesaid sum, to be approved by the Clerk of this court, he shall be released from custody pending the determination of the appeal herein assigned.

Done in open court, this 24 day of June, 1929.

JEREMIAH NETERER,
Judge.

[Endorsed]: Filed Jun. 25, 1929. [17]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now the defendant above named and assigns as error:

I.

That the Court erred in permitting the cross-examination of the defendant Secord in the following particulars:

Q. Have you ever been convicted of crime?

Mr. McKINNEY.—I object to that as not proper cross-examination.

The COURT.—Overruled.

A. I don't know what you call a crime.

Q. Answer the question.

The COURT.—He asked whether you have ever been convicted.

The WITNESS.—Yes, in this court.

Q. How many times?

A. I paid a fine in 1921 and one in 1926, I think it was.

II.

The Court erred in the instruction wherein he told the jury, "If the jury finds he was formerly

convicted,—and he says he has paid a fine in this court. * * * ”

III.

The Court erred in giving the following instruction: “He likewise had those two serving glasses. He told you where he got it. It is immaterial where he got it, if he had it in his possession, he had no right to it.” [18]

IV.

The Court erred in giving this instruction: “or, if you believe that he had this in his own hand and in his pocket, then he would be guilty of possession of it.”

V.

The Court erred in giving the following instruction: “As to the nuisance charge, if this liquor was found in this building, then of course it was in violation of the National Prohibition Act, and he is guilty of maintaining a nuisance, if it was there for the purpose of sale, and, if he made the sale, it was for the purpose of sale.”

The defendant, through his attorneys, proposes these assignments of error as a basis of appeal, notice of which has heretofore been given.

FRED C. CAMPBELL,

G. T. McKINNEY,

JOHN F. DORE,

Attorneys for Defendant.

[Endorsed]: Filed Jun. 25, 1929. [19]

[Title of Court and Cause.]

APPEAL AND BAIL BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, Joseph Odilon Secord, as principal, and _____, as surety, and _____ as surety, are held and firmly bound unto the United States of America, plaintiff in the above-entitled action, in the penal sum of Two Thousand Dollars (\$2,000), lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, and our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that, whereas the said defendant was, on the 24th day of June, 1929, sentenced on Count I, II, III, and VII, and each of them, to serve 6 months in Kitsap County jail, to run concurrently, Counts 4-5-6 three months in Kitsap County jail to run concurrently with other jail sentences, and to further pay a sum of \$500.00 as a fine, the fine being on the possession and former conviction count, and whereas the defendant has prayed an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, and whereas the above-entitled court has fixed the defendant's bond, to stay execution of the judgment in said cause, in the sum of Two Thousand (\$2,000) Dollars,—

NOW, THEREFORE, if the said defendant, Joseph Odilon Secord, shall diligently prosecute

his said appeal to effect, and shall obey and abide by and render himself amenable to all orders which said Appellate Court shall make, or order to be made, in the [20] premises, and shall render himself amenable to and obey all process issued, or ordered to be issued, by said Appellate Court herein, and shall perform any judgment made or entered herein by said Appellate Court, including the payment of any judgment on appeal, and shall not leave the jurisdiction of this court without leave being first had, and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable to and obey any and all orders issued herein by said District Court, and shall, pursuant to any order issued by said District Court, surrender himself, and will obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise to remain in full force and effect. The defendant deposits \$2,000 cash as surety on this bond and as a guarantee to pay said fine is affirmed.

JOSEPH ODILON SECORD. (Seal)

Attest: _____.

O. K. Approved:

NETERER,
Judge.

[Endorsed]: Filed Jun. 23, 1929. [21]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on the 4th day of June, 1929, at the hour of 2:00 o'clock P. M., the above-entitled cause came on regularly for trial in the above-entitled court, before the Honorable Jeremiah Neterer, Judge thereof, the plaintiff appearing by Hamlet Dodd, Assistant United States District Attorney, its attorney and counsel, the defendant appearing in person and by Fred Campbell and C. T. McKinney, his attorney and counsel.

A jury having been regularly and duly impanelled and sworn to try the cause, and the assistant United States Attorney having made a statement to the jury, and the opening statement on behalf of the defendant having been reserved until the close of plaintiff's case the following proceedings were had and testimony taken, to wit: [22]

TESTIMONY OF THOMAS MURPHY, FOR
THE GOVERNMENT.

THOMAS MURPHY, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I am a federal prohibition agent. I went to the Outlook Hotel on July 18, 1928, in company with a man named Davis. The defendant sold Davis a pint of whiskey for which I paid him two dollars.

(Testimony of Thomas Murphy.)

On July 20th I returned with Agent Long. He sold us a pint of whiskey for two dollars at that time.

On July 21, 1928, he sold us a pint of whiskey for two dollars.

Government's Exhibit 1 is the whiskey purchased on July 18; Government's Exhibit 3 is the whiskey purchased on July 21st; Government's Exhibit 6 is the whiskey purchased on July 20th.

Cross-examination.

Q. Where is Mr. Davis?

Mr. DODD.—I object to that.

The COURT.—Sustained. Sustained at this time. If the Government does not produce him I will tell the jury about it.

Mr. McKINNEY.—Exception.

Q. Who else besides Davis did you take up to the Outlook Hotel?

A. Davis took me. I then took Agent Long.

TESTIMONY OF GARFIELD LONG, FOR THE GOVERNMENT.

GARFIELD LONG, a witness produced on behalf of the [23] *the* Government, being duly sworn, testified as follows:

Direct Examination.

I went to the Outlook Hotel with Agent Murphy on July 20, 1928. I bought a pint of moonshine whiskey for two dollars. I went there on the 21st of July. Practically the same thing happened.

TESTIMONY OF ERVIN F. CARROTHERS,
FOR THE GOVERNMENT.

ERVIN F. CARROTHERS, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I am a federal prohibition agent. I participated in the search of the Outlook Hotel on July 21, 1928. Driver Fletcher and I went to the Outlook Hotel. We met the defendant in the hall. We asked him to sell us some moonshine whiskey. He refused and said he didn't know us and didn't have any to sell. We went back to the street and met Agents Reagan and Johnson. We returned with a federal search-warrant. I saw Johnson take from the defendant's pocket two whiskey serving glasses and a pint bottle partly filled with moonshine whiskey. The search-warrant was served upon him, and in room 218, which is near the office, we found five pints and six half-pints and two whiskey serving glasses. In the half-pints and pints there was moonshine whiskey. In room 202 we found 200 empty pint flasks and some coloring matter for coloring moonshine whiskey, and a siphon hose. In room 320 we found three one-gallon jugs of moonshine whiskey and several pints of moonshine whiskey in a suit case. No one occupied rooms 202 and 320.

Government's Exhibit 8 is one of the gallon jugs of moonshine whiskey taken from the Outlook Hotel, at 83 Pike Street. [24]

(Testimony of Ervin F. Carrothers.)

Government's Exhibit 2 is a pint that was taken from the defendant; Government's Exhibit 4 is one of the half-pints found in room 218. Exhibit 7 was found in room 320; Exhibit 10 was found in the same place as Government's Exhibit 2.

The defendant admitted the liquor in room 218 and the bottles in room 202 was his. He disclaimed ownership of that in room 320.

The keys were furnished us by the defendant.

Cross-examination.

The Outlook Hotel is an ordinary transient hotel.

TESTIMONY OF HERBERT FLETCHER, FOR THE GOVERNMENT.

HERBERT FLETCHER, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I am a driver for the federal prohibition department. I was present at the raid of the Outlook Hotel on July 21, 1928. In room 218 was some moonshine whiskey. In room 202 there were some empty glasses. I did not hear the defendant make any statement relative to the ownership of the property in the rooms.

TESTIMONY OF LEONARD REGAN, FOR
THE GOVERNMENT.

LEONARD REGAN, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I am a federal prohibition agent. On July 21, 1928, I went to the Outlook Hotel. Johnson searched Secord in my presence and took from him a pint bottle and a couple of [25] serving glasses. Secord gave us the keys to the hotel. In room 218 we found six half-pints and five pints on the floor, and the serving glasses, I think, in that room. In room 202 we found a crate just as it had been sent from the bottle house. There was another small crate. We went upstairs to room 320 and found a couple of suitcases and three one-gallon jugs of moonshine whiskey and a number of pints and half-pints and five or six bottles. I went down and got Secord. He was very much excited and wanted to know if there wasn't some way he could fix it up. He disclaimed ownership of the liquor found in room 320. To the best of my recollection he admitted ownership of the liquor on the ground floor.

Cross-examination.

He denied ownership of the liquor in room 320.

TESTIMONY OF F. A. JOHNSON, FOR THE
GOVERNMENT.

F. A. JOHNSON, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I went to the Outlook Hotel on July 21, 1928. The defendant had two serving glasses in his hand and a pint bottle in his pocket. Government's Exhibit 2 is the bottle. Government's Exhibits 9 and 10 are the glasses.

TESTIMONY OF EARL CORWIN, FOR THE
GOVERNMENT.

EARL CORWIN, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

The liquor in court in the exhibits runs about forty per cent alcohol. [26]

TESTIMONY OF TRUMAN EGGERS, FOR
THE GOVERNMENT.

TRUMAN EGGERS, witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I am one of the deputy clerks of this court.

(Testimony of Truman Egger.)

Cause No. 5724 is United States vs. Joseph Odilon Secord.

Q. Will you read the sentence of the Court in that Cause No. 5724?

(Witness reads judgment and information.)

TESTIMONY OF GORDON B. O'HARA, FOR THE GOVERNMENT.

GORDON B. O'HARA, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I was a federal prohibition agent in 1921. The defendant in this case, Secord, is the same man who was charged in Cause 5724.

TESTIMONY OF TRUMAN EGGER, RE- CALLED FOR THE GOVERNMENT.

TRUMAN EGGER, recalled on behalf of the Government, testified as follows:

The witness reads the information in Cause No. 9983, United States of America vs. Joseph Odilon Secord. Reads Count II, wherein the defendant was charged with possession of certain intoxicating liquor.

Reads sentence showing defendant was ordered to pay a fine thirty-five dollars.

TESTIMONY OF WILLIAM WHITNEY, FOR
THE GOVERNMENT. [27]

WILLIAM WHITNEY, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I am legal adviser for the prohibition department.

The defendant is the same person who was convicted in Cause No. 9983.

DEFENDANT'S EVIDENCE.

TESTIMONY OF JOSEPH ODILON SECORD,
IN HIS OWN BEHALF.

JOSEPH ODILON SECORD, the defendant, being duly sworn, testified on his own behalf as follows:

Direct Examination.

I am the defendant. I am sixty-eight years old and have lived in Seattle twenty-eight years.

On the 21st of July, 1928, I saw Fletcher and Johnson in my hotel. I never saw Carrothers before; I never saw Murphy before in my life; I never saw Long before. I never sold them liquor.

Room 212 of the Outlook Hotel was occupied by Carl Miller on the 21st of July. He had occupied it for two months. I had no property of mine in the room. As the operator of the hotel I had a

(Testimony of Joseph Odilon Secord.)

pass-key to all of the rooms. The liquor and serving glasses found in room 218 was not mine. I do not know what was found in room 320. The liquor found in that room was not mine. Room 202 was rented to a man named Armstrong. There were broken bottles in room 201.

Q. You heard the testimony that Agent Johnson found a bottle of liquor in your coat pocket and a couple of serving glasses.

A. I was out in the transient rooms and found that in one of [28] the rooms. I didn't know what was in it.

Q. You had just taken it out of the room at the time that the raid was made? A. Yes, sir.

Q. It wasn't your liquor, was it? A. No, sir.

Q. What were you doing with it?

A. I don't know. I wanted to see what it looked like and throw it away.

Q. To dispose of it, throw it away?

A. I find things like that every day.

Cross-examination.

Q. What was the explanation of the liquor found in your pocket?

A. I found that in one of the transient rooms.

Q. The two serving glasses belonged to a transient? A. Yes, sir.

Q. You were doing what with it?

A. I suppose I was going to see what was in it.

COURT'S INSTRUCTIONS TO THE JURY.

There are seven counts in the indictment. One charges sale on the 18th of July, 1928; another on July 20, 1928; and another with sale on the 21st of July; the fourth with possession on the 21st of July, 1928, of certain intoxicating liquor containing the prohibited alcoholic content and being fit for beverage purposes; Count 5 with having been formerly convicted on the 14th day of March, 1921, for having had possession of intoxicating liquor on the 1st day of December, 1920. Then he is further charged with having been convicted on the 9th day of April, 1926, for having had possession of intoxicating liquor on the 1st day of August, 1925. Then he is further charged with maintaining a nuisance at 83 Pike Street, Seattle, Washington, at a place known as the Outlook Hotel, from July 18, to July 21, 1928, by keeping in this building intoxicating liquor for the purpose of sale in violation of the National Prohibition Act.

The defendant has pleaded not guilty to all of the counts in the indictment. That means that he denies them, and the burden of proof is upon the Government, the plaintiff, to show he is guilty beyond every reasonable doubt, and he is presumed innocent until proven guilty by the evidence which has been presented, by the degree of proof which I have indicated.

You are instructed that it is against the law for a person to sell any liquor as charged in this indictment, or to have possession of it; and the law

also provides that where a person has been formerly convicted, then it is the duty of the United States Attorney to charge prior conviction in the indictment, but that is only for one purpose, and that is that the Court, when that is established, shall make the penalty a little more than for the first conviction. [30]

You gentlemen are the sole judges of the facts in the case, and you must determine what the facts are from the evidence presented. You are likewise the sole judges of the credibility of the witnesses, who have testified before you, and in passing upon the credibility of the witnesses and in giving the weight to their testimony, you will take into consideration any evidence and all evidence that has been disclosed upon the trial of the case that would have any bearing upon the truthfulness of the story; and you will take into consideration the appearance of the witnesses upon the witnessstand, the interest they manifested upon the trial, the opportunity of the witnesses for knowing the facts about which they have testified, the interest or lack of interest in the result of this trial, and from all this determine where you believe the truth to lie.

Is there anything in the manner of the witnesses on the part of the Government—they testified to having purchased from the defendant what they call moonshine whiskey, this liquid which the evidence shows contains the prohibited alcoholic content and is fit for beverage purposes. They swore that they bought certain bottles, and bring them into

court, on these various dates; and, likewise, they state they had a search-warrant and found liquor which they have produced here, and which has been admitted in evidence.

The defendant denies that he had this liquor. He had this liquor in his pocket,—you heard what he said. He likewise had those two serving glasses. He told you where he got it. It is immaterial where he got it, if he had it in his possession, he had no right to it. If you believe the witnesses on the part of the Government, that they bought this from the defendant, then the defendant is guilty of every count charged, charging sale; or, if you believe that he had this in his own hand and in his pocket, [31] then he will be guilty of possession of it.

As to the nuisance charge, if this liquor was found in this building, then of course it was in violation of the National Prohibition Act, and he is guilty of maintaining a nuisance, if it was there for the purpose of sale, and, if he made the sale, it was for the purpose of sale.

You will pass upon this case fairly. Is there anything to show that the witnesses on the part of the Government are prejudiced against this defendant, that they lied for the purpose of convicting an innocent man, because, if they did lie, they knew the defendant was innocent, and perjured themselves. Does their testimony sound fair and reasonable. Do all the circumstances disclosed,—the production of the liquor in court, and the relation it bears to all the circumstances detailed, together

with the testimony of the Government agents, impress you as being the truth; if it does give it the weight to which it is entitled, and if it does not you will of course render your verdict accordingly. They are in the employ of the Government,—all of these witnesses except one or two. They are paid a salary. Their compensation does not depend upon conviction, so they are paid just the same whether the defendant is convicted or not. Now, then, were they honestly mistaken, or did they wilfully perjure themselves?

On the other hand, the defendant is interested, because, if he is convicted, he must be punished. Did he then go on the stand and so frame his testimony as to *case* a reasonable doubt with relation to the testimony of the other witnesses. So you will consider this case fairly, and if you entertain a reasonable doubt in your mind, you will resolve that doubt in favor of the defendant and return a verdict of not guilty.

Unless you find the defendant guilty of the possession charge, which would be Count 4, then of course you could not find [32] him guilty of Counts 5 and 6, because Counts 5 and 6 are predicated on Count 4; otherwise these counts do not amount to anything in this case. If the jury finds he was formerly convicted,—and he says he has paid a fine in this court,—if you find him guilty of possession as charged, you can find him guilty of having been formerly convicted, if you believe he was formerly convicted as charged in Counts 5 and 6, as well. If you believe this liquor was for the

purpose of sale, then you will find him guilty of the nuisance count, but if you have a reasonable doubt in any of the counts, it is your duty to return a verdict of not guilty.

A reasonable doubt is just such a doubt as the term implies, a doubt for which you can give a reason; not speculative imaginary or conjectural. The Government does not need to prove the defendant guilty beyond all possibility of doubt, but a reasonable doubt,—such a doubt as the term implies,—such a doubt as a man of prudence, sensibility and decisions, in determining an issue of like concern to himself as that before the jury to the defendant, would make him pause or hesitate in arriving at a conclusion. It is a doubt which is created by the want of evidence, or may be by the evidence itself.

A juror is satisfied beyond a reasonable doubt when he is convinced to a moral certainty of the guilt of the party charged.

This indictment is not evidence. It will be sent to the jury-room simply for you to see what the paper charge is.

Are there any exceptions? I think I have covered the case.

It will require your entire number to agree upon a verdict and when you have agreed you will cause it to be signed by your foreman whom you will elect immediately upon retiring [33] to the jury-room. In the form of verdict there is a blank in which you will write “is” or “not,” as you may find.

If you agree before five o'clock I will receive the verdict. If you do not agree before five o'clock, when you do agree the foreman will sign it and put it in an envelope and seal it and put it in his pocket and you will report to the Court at ten o'clock tomorrow morning.

You may retire.

Settled and allowed as a true and correct bill of exceptions in the above-entitled cause, this 12th day of November, 1929.

JEREMIAH NETERER,
District Judge.

O. K.—HAMLET P. DODD,
Asst. U. S. Atty.

Received a copy of the within bill of exceptions this 28 day of Oct., 1929.

ANTHONY SAVAGE,
Attorney for Pltff.

[Endorsed]: Lodged Oct. 28, 1929.

[Endorsed]: Filed Nov. 12, 1929. [34]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING NOVEMBER 15, 1929, FOR FILING RECORD.

For good cause shown, IT IS HEREBY ORDERED that the time for filing the record on appeal of said cause in the office of the Clerk of the

United States Circuit Court of Appeals for the Ninth Circuit be and the same hereby is extended to and including the 15th day of November, 1929.

Done in open court, this 4th day of November, 1929.

JEREMIAH NETERER,
Judge.

O. K.—ANTHONY SAVAGE,
U. S. Atty.

Nov. 15, 1929.

[Endorsed]: Filed Nov. 4, 1929. [35]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of the record on appeal in the above-entitled cause, and include therein the following:

1. Indictment.
2. Plea.
3. Verdict.
4. Judgment.
5. Petition for appeal.
6. Order allowing appeal.
7. Appeal and bail bond.
8. Assignment of errors.
9. Notice of appeal.
10. Bill of exceptions.

JOHN F. DORE.

Received a copy of the within praecipe this 30 day of Oct., 1929.

ANTHONY SAVAGE,
Attorney for _____.

[Endorsed]: Filed Oct. 30, 1929. [36]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify that this typewritten transcript of record, consisting of pages numbered from 1 to 36, inclusive, is a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, at Seattle, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on be-

half of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fees (Act Feb. 11, 1925) for making record, certificate or return 67 folios at 15¢	\$10.05
Certificate of Clerk to transcript of record, with seal.....	.50
Appeal fee (Sec. 5 of Act).....	5.00
	<hr/>
	Total, \$15.55

[37]

I hereby certify that the above cost for preparing and certifying record, amounting to \$15.55, has been paid to me by the attorney for appellant.

I further certify that I attach hereto and transmit herewith the original citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said District Court, at Seattle, in said District this 12 day of November, 1929.

[Seal]

ED. M. LAKIN,

Clerk U. S. District Court, Western District of Washington.

By S. E. Leitch,

Deputy. [38]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States of America to the United States of America, and to ANTHONY SAVAGE, United States Attorney for the Western District of Washington, Northern Division, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of appeal, filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein the said Joseph Odilon Secord is appellant and the United States of America, is respondent, to show cause, if any there be, why judgment in the said writ of appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

WITNESS the Honorable JEREMIAH NETERER, Judge of the District Court of the United

States for the Western District of Washington,
Northern Division, this 12 day of November, 1929.

JEREMIAH NETERER,
United States District Judge.

[Seal]

Attest: ED. M. LAKIN,

Clerk of the District Court of the United States for
the Western District of Washington, Northern
Division.

By S. E. Leitch,
Deputy.

[Endorsed]: Filed Nov. 12, 1929. [39]

[Endorsed]: No. 6171. United States Circuit
Court of Appeals for the Ninth Circuit. Joseph
Odilon Secord, Appellant, vs. United States of
America, Appellee. Transcript of Record. Upon
Appeal from the United States District Court for
the Western District of Washington, Northern
Division.

Filed June 21, 1930.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit.

